

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ANTHONY MICHAEL JACKSON,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-21-960-F
)	
SCOTT NUNN,)	
)	
Respondent.)	

ORDER

Petitioner Anthony Michael Jackson, a state prisoner appearing *pro se*, commenced this action by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He claimed the “[t]rial court lacked jurisdiction to prosecute [him] due to federal statute (18 U.S.C. § 1153)[.]” Doc. no. 1, p. 5. The court referred the matter to United States Magistrate Judge Amanda Maxwell Green for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B) and (C). Respondent Scott Nunn filed a motion seeking to dismiss the § 2254 petition as untimely pursuant to 28 U.S.C. § 2244(d)(1). Doc. no. 10. Petitioner filed a response, opposing dismissal. Doc. no. 12. On May 18, 2022, Magistrate Judge Green issued a Report and Recommendation, recommending the court grant respondent’s motion and dismiss petitioner’s petition with prejudice. Doc. no. 13. Specifically, Magistrate Judge Green concluded the petition was untimely under 28 U.S.C. § 2244(d)(1)(A); 28 U.S.C. § 2244(d)(1)(C) and (D) were not applicable; and petitioner was not entitled to equitable tolling or application of the “actual innocence” exception.

The court is in receipt of petitioner's Objection to Report and Recommendation. Doc. no. 14. Initially, the court notes that petitioner raises several arguments which were not raised before Magistrate Judge Green. *See, id.*, ¶¶ 2-6. The court declines to address those arguments because "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996). Having conducted a de novo review, the court concurs with the cogent analysis of Magistrate Judge Green. The court need not repeat the full analysis here. Petitioner's arguments that he is entitled to equitable tolling are without merit. *See*, doc. no. 14, ¶¶ 7-11. The court accepts, adopts and affirms the Report and Recommendation.¹

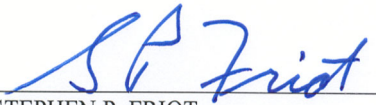
Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to a petitioner. The court's dismissal of petitioner's § 2254 petition as untimely is such an order. *See, e.g., Clark v. Oklahoma*, 468 F.3d 711, 713 (10th Cir. 2006). Where the district court dismisses a petition on procedural grounds, such as in the instant case, a certificate of appealability may issue only if the petitioner shows both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Upon review, the court concludes that petitioner is not entitled to issuance of a certificate of appealability. A certificate of appealability is denied.

Accordingly, the Report and Recommendation (doc. no. 13) issued by United States Magistrate Judge Amanda Maxfield Green on May 18, 2022 is **ACCEPTED**,

¹ In light of the court's ruling, the court need not address petitioner's arguments relating to the merits of his petition.

ADOPTED, and **AFFIRMED**. Respondent Scott Nunn's Pre-Answer Motion to Dismiss 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus as Untimely (doc. no. 10) is **GRANTED**. Petitioner, Anthony Michael Jackson's Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2254 is **DISMISSED WITH PREJUDICE** as untimely. A certificate of appealability is **DENIED**. Judgment shall issue separately.

IT IS SO ORDERED this 22nd day of June, 2022.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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